Filed 3/19/09 In re S.M. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re S.M., a Person Coming Under the Juvenile Court Law.	B207767 (Los Angeles County Super. Ct. No. CK58959)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.M., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County. Steven Berman, Juvenile Court Referee. Appeal dismissed.

John L. Dodd, under appointment by the Court of Appeal, and John L. Dodd & Associates for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and William D. Thetford, Principal Deputy County Counsel, for Plaintiff and Respondent.

M.M. (Mother) appeals from a May 27, 2008 post permanent plan review order with respect to her daughter, S.M. (born in Aug. 1990), who was placed in a permanent plan of foster care with her maternal aunt in 2007. Because Mother's appeal challenges the sufficiency of the evidence of a purported reasonable services factual finding that was *not* made as to S.M. on May 27, 2008, we grant the motion of the Los Angeles County Department of Children and Family Services (DCFS) to dismiss the appeal.

BACKGROUND

In April 2005, 14-year-old S.M. and her 16-year-old sister, K.M., were detained and placed in foster care after Mother and her live-in male companion, M.G., reported to DCFS that the girls were disrespectful, aggressive, and disobedient. The girls had gone to live with the maternal aunt without Mother's permission.[1] The girls told DCFS that Mother and M.G., who was "'military like,'" would wake them up in the middle of the night to clean the kitchen and M.G. would make them redo the chores if they were not done to his satisfaction. As a form of punishment, Mother took away the girls' clothing and forced them to wear old clothes that were too small.

In August 2005, the juvenile court declared K.M. and S.M. dependents of the court pursuant to Welfare and Institutions Code section 300, subdivisions (b) (failure to protect) and (c) (emotional damage).[2] Notwithstanding Mother's waiver of reunification services, the court ordered services, including counseling. Mother was afforded monitored weekly visits. In November 2005, K.M. was placed with the maternal aunt and in January 2006, S.M. was also placed with the maternal aunt.

According to a December 2005 status review report, Mother made it clear that M.G. was always going to be part of her life and she was willing to relinquish her parental rights instead of reuniting with her daughters. The girls repeatedly told DCFS that they did not want to reunify with Mother as long as M.G. was in her home. During

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[1] The girls' father, U.R., did not appear in these proceedings and was in prison in Washington state.

[2] Unspecified statutory references are to the Welfare and Institutions Code.

the pendency of this proceeding, Mother visited with her daughters only once, in May 2005. In July 2006, the court terminated Mother's family reunification services and set a permanent plan hearing. Mother filed a writ petition challenging the July 2006 order. We denied Mother's petition and upheld the July 2006 order in a nonpublished opinion. (*Meta M. v. Superior Court* (Oct. 30, 2006, B192596).)

In November 2006, the girls were doing well in school and had not exhibited any behavioral problems warranting intervention. DCFS recommended for S.M. a permanent plan of legal guardianship with the maternal aunt, and in January 2007 the maternal aunt was appointed her legal guardian. In April 2007, DCFS reported that S.M. was thriving in the care of the maternal aunt, and in May 2007, the juvenile court terminated jurisdiction as to S.M. and transferred the matter to Kin-Gap (Kinship Guardianship Assistance Payments). As to K.M., in October 2007, the court identified the permanent plan as placement with the maternal aunt with a specific goal of emancipation. The juvenile court retained jurisdiction as to K.M.

In October 2007, DCFS filed a section 388 petition seeking to reinstate jurisdiction as to S.M. because DCFS discovered that S.M.'s Washington state birth certificate had been forged by her father and was invalid, precluding her from obtaining a social security card, employment, and schooling. The court reinstated jurisdiction and the matter was continued to May 2008 for a review hearing.

In May 2008, DCFS reported that S.M. was not obeying her maternal aunt's household rules, and on May 8 she was expelled from school for two days for being disrespectful to school personnel. According to the maternal aunt, S.M. felt that because she had good grades and was going to graduate from high school in a few weeks, she did not have to inform the maternal aunt of her whereabouts.

At the May 27, 2008 review hearing, S.M.'s attorney informed the court that S.M. was not then in counseling but that recently her behavior had improved. The court ordered that S.M. resume counseling, including anger management. After allowing Mother to express her grievances, the court then made the following findings: "Notice having been given, minors remain dependents of the court. The current placements are

necessary and appropriate. The Department is providing adequate services and making reasonable efforts to move the case to permanence. . . . [¶] The court is going to set the next hearing for November 25th, 2008." After K.M.'s attorney asked for a hearing in one month to terminate jurisdiction as to K.M., the court stated, "I didn't see a T.I.L.P. [Transitional Independent Living Plan] for [S.M.] [¶] *The court finds the Department is not providing adequate services to enable [S.M.] to move from foster care to emancipation*; orders a T.I.L.P. filled out and signed within 10 days from today's date. [¶] Minor is to be referred to I.L.P. services immediately. She's almost 18 years old." (Italics added.)

As to K.M., the court ordered an emancipation conference and continued her matter to June 27, 2008.

The clerk's May 27, 2008 minute order provided as to both girls that "reasonable services have been provided to meet the needs of the minor(s)" and that DCFS made "reasonable efforts to enable the child's safe return home and to complete whatever steps are necessary to finalize the permanent placement of the child." As to S.M., the minute order also stated: "The court finds that the Department has not provided the necessary services to assist the child in making the transition from foster care to independent living," and DCFS "is to get an ILP immediately and a signed TILP within 10 days for [S.M.]"

On June 2, 2008, Mother filed a notice of appeal from the May 27, 2008 order. Her briefs challenge only the sufficiency of the evidence of a purported finding that reasonable services had been provided to S.M. DCFS moved to dismiss the appeal on several grounds, including the ground that the purported reasonable services finding does not exist, as the juvenile court expressly found that reasonable services had *not* been provided to help S.M. make the transition from foster care to independent living.

DISCUSSION

In her opposition to DCFS's motion to dismiss the appeal, Mother explains that her appeal constitutes a challenge to a purported factual finding in the May 27, 2008 minute order that reasonable efforts were made to enable S.M.'s "safe return home."

"Conflicts between the reporter's and clerk's transcripts are generally presumed to be clerical in nature and are resolved in favor of the reporter's transcript unless the particular circumstances dictate otherwise." (*In re Merrick V.* (2004) 122 Cal.App.4th 235, 249.) If possible, potential conflicts in the record should be harmonized. (See, e.g., *People v. Smith* (1983) 33 Cal.3d 596, 599 [conflicts in record should be harmonized if possible; if not possible, that part of record will prevail which, because of nature or origin, is entitled to greater credence].)

We harmonize the instant record by viewing the "reasonable efforts" and "safe return home" language in the minute order as reflecting prior findings and history of the case and not any factual findings that were made by the juvenile court on May 27, 2008. Family reunification services had been terminated with a reasonable services finding as to S.M. in July 2006, which was upheld by the Court of Appeal in a written opinion denying Mother's writ petition. (*Meta M. v. Superior Court*, *supra*, B192596.) The decision in the prior writ matter is now law of the case as to whether reasonable reunification services had been provided to Mother. (*In re Christopher A.* (1991) 226 Cal.App.3d 1154, 1159 [decision on merits of writ petition is binding under law of case doctrine].) In other words, the provisions in the May 27, 2008 minute order which form the basis of Mother's appeal are not factual findings, but legal conclusions by virtue of the law of the case doctrine.

On May 27, 2008, the juvenile court made a factual finding that reasonable services to assist S.M. in making the transition from foster care to independent living *had not been provided*, and the juvenile court ordered DCFS to provide her with counseling and independent living services; Mother does not challenge this finding.

If by this appeal Mother seeks review of *prior reasonable services findings* in orders that were not appealed, we conclude that we have no jurisdiction to do so. "An appeal from the most recent order entered in a dependency matter may not challenge prior orders for which the statutory time for filing an appeal has passed." (*In re Pedro N.* (1995) 35 Cal.App.4th 183, 189.)

Because we grant DCFS's motion to dismiss on the ground that Mother's briefs raise no cognizable appellate issue, we need not address other issues raised by the parties.

DISPOSITION

The motion of the Los Angeles County Department of Children and Family Services to dismiss the appeal is granted. The appeal filed by M.M. on June 2, 2008, is dismissed.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

WEISBERG, J.*

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.